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IN THE

Supreme Court of the United States

October Term, 1945

No. 693

BARNEY E. GASKILL, Et Al.,
Petitioners,

vs.

CLAUDE A. ROTH, Trustee of the Property of the Chicago & North Western Railway Company, Et Al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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Law Briefs—Omaha Legal Blue Printing Co.—413 So. 15th St.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners believe that in order to simplify the presentation of the facts in this case, because the record is voluminous, we feel it will aid this Court in determining what is involved in this proceeding by adopting the opin-

ion of the Court beginning on page 6 of the C. C. A. printed record and up to the bottom of page 9 of said record, as a fair presentation of the questions involved and the contentions of the parties. That part of Judge Woodrough's opinion is as follows:

(Par. 1) "This action was brought May 8, 1939, by forty-one conductors and brakemen employed by the Chicago and North Western Railway Company in its Eastern or Nebraska Division against the railroad and one Kimball, an employee of the road in its Sioux City Division. The Order of Railway Conductors and Brotherhood of Railroad Trainmen were also made parties defendant. After hearing, the case was dismissed and decision of this court on appeal reversing the dismissal, which includes a statement of the nature of the action, is reported in 119 F. 2d 105. On certiorari the Supreme Court remanded the case to the District Court without prejudice to an application for leave to amend the bill of complaint. 315 U. S. 442. Amended pleadings were filed and the case proceeded to final judgment by the terms of which it was again dismissed in accordance with the court's complete findings and conclusions which were against the plaintiffs. This second appeal has been taken by the plaintiffs to reverse that judgment.

(Par. 2) "In its substance the claim of the plaintiffs is that by virtue of the Agreement (referred to as Exhibits "A" and "B") entered into between the North Western Railway Company and the Brotherhood of Railroad Trainmen and the Order of Railway Conductors under which the plaintiffs work for the North Western railway (the relevant parts of which are set out in the amended pleadings), the plaintiffs have had and have the right to participate in doing a certain percentage of the work in an order of seniority among themselves over that certain railroad trackage from Omaha, Nebraska, through Blair, Nebraska, to California Junction, Iowa (being part of certain runs

between Omaha and Sioux City, Iowa), and that the North Western has breached and will continue to breach the contract by diverting their part of the work from the conductors and brakemen of the North Western's Nebraska Division, including the plaintiffs, to conductors and brakemen of the Sioux City Division of the North Western. The plaintiff's claim of right to perform the work is rested on the contention that the trackage described is and has been a part of the Nebraska Division of the North Western railroad, and that the railroad's operations over that trackage into and from the Sioux City Division of the railroad are inter-division operations and that the said Agreement accords the plaintiffs, as conductors and brakemen of the Nebraska Division, a right to participate in the inter-division work and in the work of said operations.

(Par. 3) "The position of the North Western is that the trackage between Omaha and Blair (which includes about 24 miles of the total 31 miles of the described trackage) belongs to the Chicago, St. Paul, Minneapolis and Omaha Railway Company (referred to as the M. & O.), and is not and has never been a part of the Nebraska Division of the North Western, and that the Agreement *does not award any proportion of the work in question to the class of workmen to which the plaintiffs belong.* The line of the M. & O. from Omaha to Sioux City is on the west side of the Missouri river, which it crosses at Sioux City. The North Western's line is practically parallel on the east side of the river, but as it does not reach to Omaha, its Omaha-Sioux City traffic has been moved into and out of Omaha during different periods over different railroads. Since 1930 it has moved over the described trackage of the M. & O. railroad. The North Western and the M. & O. railroads are distinct and separate entities and are so operated. On May 1, 1930, the North Western and the M. & O. adopted and put *into effect a new plan* for the handling of the

traffic of the two roads between Omaha and Sioux City under which the trackage of the M. & O. in question here is used between Omaha and Blair, but the volume of transportation on the M. & O. as a whole was reduced and that on the North Western was increased. The change became necessary for economical operation, in that the M. & O. Omaha-Sioux City line is longer and its grades and curves heavier than on the North Western, and much larger trains move over the North Western. The change affected the amount of work to be done on the respective roads, but it was put into effect and has been carried out since August 19, 1930, in full recognition by the railroads of their *collectively bargained labor agreements*, including the *Agreement of the North Western on which the plaintiffs rely.* Neither of the two railroads has at any time denied the existence or validity of said agreements, nor that such rights to work as are granted to their respective employees by the terms of the agreements inure to all the employees in the classes designated (whether they are members of the unions or not), but the change in the operations of the two railroads affecting the amount of work available to certain men resulted in disputes among the men as to the division of the work among them. The *North Western's position is that all of such disputes, including the claims asserted by plaintiffs in this action*, have been submitted to and considered by the officers and tribuials authorized under the Agreement, that the work *has been allotted* in accordance with the decisions of such authorities *agreed to by the railroads*, and that such decisions so agreed to constitute the collective bargain agreement applicable to the particular Omaha-Sioux City operations of the two railroads here involved.

(Par. 4) "The defendants Order and Brotherhood also pleaded and assert that the claims of the plaintiffs herein have been duly determined against them by the decisions, rulings and interpretations of

> the representatives of the class and craft of conductors and trainmen, the Grand Lodge officers of the Order and of the Brotherhood and the highest tribunals thereof, and that plaintiffs are bound by the action of their authorized representatives and *have no right as a class or individually to maintain the action.*"

It is our contention that the paragraph, top of page 10 of C. C. A. printed record, in which the Court stated, "that all the evidence was taken and ruling was requested first on the issue as to whether or not there was a breach of the agreement by the North Western causing damage to plaintiffs," is not quite an accurate statement as to the procedure.

The record shows that the petitioners at all times were demanding an audit of the books of the company to determine exactly the amount of work that was lost by the petitioners, but the trial Court suggested that we proceed with the evidence in so far as to determine whether or not the so-called "bargaining agreements" referred to in this record settled, as claimed by the respondents, the questions involved here, and whether that fact would determine that the plaintiffs were not entitled to any remedy. Therefore, if the Court decided in favor of plaintiffs he would order an audit, but if he should determine that the record sustained the claim of the defendants that these matters were settled by the collective bargaining agent, and they had authority to settle the claims, this would necessitate the expense of having an audit. Therefore, no evidence was submitted as to the amount of the work done by plaintiffs over the disputed mileage. That matter was reserved until the Court passed on the preliminary questions above referred to.

It was always our claim that if an audit had been had, even as we requested before, this case went up as above

set forth on the preliminary hearing on the question of jurisdiction, it would have disclosed the amount of damage that we sustained, the number of miles the Sioux City Division did over the disputed trackage that we were entitled to, and the names and amount of loss that each one of the plaintiffs sustained; but the Court thought the other procedure better, and the Court adopted that method rather than, as stated by Judge Woodrough in his opinion, that all the evidence was taken and ruling *requested* first on the question whether there was a breach of the agreement by the North Western causing damage to plaintiffs.

The Findings of Facts and Conclusions of Law on which the District Court passed its judgment of dismissal are appended and found beginning page 10 of the C. C. A. printed record. As stated by Judge Woodrough at the top page 11 of said record, appellants contended in the Circuit Court that the trial Court was clearly in error in finding that the agreements on which plaintiffs' actions were based limited the seniority rights of the plaintiffs to the division of the North Western Railroad on which they were employed, and in finding that the M. & O. trackage between Omaha and Blair, used in the Omaha and Sioux City runs in controversy, is not a part of the Nebraska Division of the Northwestern Railroad, seniority district.

It is our further contention that this record will show that prior to this new attempted agreement May 1, 1930, all of the 31 miles in controversy was, and has been for several years, treated as a part of the Nebraska Division of the Northwestern, irrespective of the fact that the 24 and a fraction miles was leased rather than owned by the railroad, and that the Nebraska Division, plaintiffs herein, of the Northwestern Railway did all the work of the Northwestern that was carried over that 24 miles of

track from Omaha to Blair and 7½ miles of track from Blair to California Junction. That prior to the new agreement this record shows that all the work, both of the M. & O. and of the Northwestern Railroad, was done solely by crews of the Northwestern Railroad, and that this controversy arose because the employees of the M. & O. claimed that they should participate in the doing of this work, and that after considerable negotiations it was finally agreed that the joint work of both roads should be divided between the M. & O. employees, by them taking *25%* of the work, and the Northwestern taking the remaining *75%*. As found by the last part of Par. 3 of the District Court findings of fact, that prior to the inauguration of these runs the Nebraska Division of the Chicago & Northwestern *never* operated any trains on the *Sioux City Division* of the road, and likewise the Sioux City Division men of that railroad never operated any trains on the Nebraska Division of that railroad.

We also contend that this record shows that the so-called agreement did not hold, as held by the District Court's decision and by the Circuit Court's decision, that that work that was done under this new agreement was *not inter-divisional* runs, but that they simply held, that the joint work of both the M. & O. and the Northwestern was inter-railroad service, and that work only should be apportioned on the 75% and 25% basis generally between the employees of the M. & O. and the employees of the Northwestern.

There is no evidence in the record to show that that agreement of May 1, 1930, *pretended to determine who should do the 75% remaining of the Northwestern work carried on by the Northwestern* from Omaha to Blair over the *24 and a fraction miles,* and then from Blair to Califor-

nia Junction over the 7½ *miles* belonging outright to the Northwestern.

This record does not show, as found by the District Court and Circuit Court of Appeals, that that work was assigned by that agreement to the *Sioux City Division of the Northwestern.*

That this record does show that that work just described runs over two *seniority districts,* and should be divided on a mileage percentage basis, and that as the mileage from Omaha over the leased tracks to Blair and from Blair to California Junction, Iowa, was 30% of the mileage from Omaha to Sioux City and as the mileage from California Junction to Sioux City was 70% of the total mileage from Omaha to Sioux City, this work should be divided on a 30% to 70% basis between the Nebraska Division of the Northwestern and the Sioux City Division of the Northwestern. That that question or dispute was *never submitted to the bargaining agents* for settlement, nor *never was attempted to be decided by them, notwithstanding the holding of the District Court and Circuit Court to the contrary.*

Petitioners also claim, as stated by Judge Woodrough, bottom page 13 C. C. A. record, of his opinion, that the evidence is to the effect that the brakemen and conductors of the Nebraska Division of the Northwestern have worked on the tracks of the M. & O. Railroad between Omaha and Blair prior to and since 1930.

We further contend that this record shows contrary to his statement at the top of page 14 of the C. C. A. record, that there is evidence to support appellants' contention that the Northwestern has accorded the Nebraska Di-

vision seniority rights over the M. & O. Railroad track, for the reason that it is stipulated in the record that the M. & O. tracks, operated over those tracks that have been leased under a 99-year lease as though they were owned by the Northwestern.

It is not true, as held by Judge Woodrough at top of page 14, additional proceedings, that Exhibits "A" and "B" did not accord them seniority rights.

Our contention being that it makes no difference whether the trains are operated over leased tracks or tracks actually owned by the railroad, the rights of the employees are just the same, and the evidence shows that at all times all the Northwestern work that was done over this track was done, prior to May 1, 1930, by the Nebraska Division's petitioners herein.

That it is stipulated in the record, as found by Judge Woodrough on page 14, additional proceedings, that prior to the inauguration of these runs in 1930 the Nebraska Division of the Chicago & Northwestern Railroad Company never operated any trains on the Sioux City Division of that railroad, and likewise the Sioux City Division men of that railroad never operated any trains on the Nebraska Division of that railroad, but since that date the record shows that the Sioux City Division, not by virtue of any agreement submitted to the bargaining agent but by the arbitrary decision of the Northwestern itself, has been doing all of the Northwestern work from Sioux City to Omaha over the track here in controversy, which runs through two seniority districts.

It is our contention that the record also shows that the 7½ miles as shown by this record to always have been for

years a part of the Nebraska Division of the Northwestern, and since May, 1930, this work has been taken away from the Nebraska Division and given to the Sioux City Division of the Northwestern, not by virtue of any bargaining agreement.

Petitioners' further contention is with reference to the decision of Judge Woodrough, beginning on bottom of page 17 of additional proceedings, with reference to the 7½ miles, that there was some inter-divisional run on the short distance of 5.9 miles between California Junction and Missouri Valley, which Judge Woodrough assumed was Sioux City Division, but the record here shows that that 5.9 miles was also part of the Nebraska Division of the Northwestern, but as that 5.9 miles was not traveled on the trips from Omaha to California Junction to Sioux City that was not involved in this controversy.

To sustain our statement as to what the record shows, it is stipulated (Ex. 11, Stip. 11) that the line from California Junction to Sioux City, Iowa, was and is owned by the Chicago & Northwestern Railroad Company, and was until very recently a part of the Sioux City Division of the Northwestern (R. 110).

At page 162 (original record) O. G. Jones, General Chairman of the B. of R. T., stated, "that the *Nebraska Division* includes the *trackage* 5.9 miles between Missouri Valley and California Junction."

Exhibit 1 (R. 36) recites "that the adjustment of disputes between employees of the two properties is not the subject of formal agreements supplementing the current schedules."

It is stipulated (Ex. 1, Stip. 1, R. 75) that the F. E. & M. V. R. R. exercised its contract rights to operate trains over leased tracks until 1903 by, general deed, the F. E. & M. V. R. R. conveyed all its property and rights to the Northwestern and after the date of such deed the Northwestern has from time to time operated trains over this piece of track between Omaha and Blair, Nebraska, in accordance with said contract since 1888.

Exhibit 11 (R. 141) and Stipulation (Par. 7, R. 146) stated, "that prior to and since May 1, 1930, Nebraska Division crews have manned trains over this leased track between Omaha and Blair, Nebraska," and Exhibit 12, Stipulation 12, (R. 141, original record), stated employees of the Northwestern holding seniority rights on the Sioux City Division in engine and train service did not perform any work between California Junction and Omaha via Blair, and also prior to said date employees holding seniority on the Nebraska Division, formerly Eastern Division, did not perform any work between California Junction and Sioux City, Iowa, on the Sioux City Division of said railroad. In other words, as Mr. Dressler, representing the Northwestern, stated, "The Sioux City fellows did not come to Omaha, and the Omaha fellows did not go to Sioux City."

Now the Sioux City Division comes clear from Sioux City to Omaha, *doing all the work on both seniority districts.*

At Stipulation Exhibit 3, bottom of page 94, original record, Exhibit 3 (a) shows the *Eastern Division,* which is now the *Nebraska Division* of the Northwestern, includes 24.7 miles of track between *Blair* and *Omaha* designated as *M. & O. Railroad leased.*

In Exhibit 21, page 154 original record, it is stipulated that the Northwestern has trackage rights for the operation of their trains between Blair and Omaha, Nebraska, and have for 48 years exercised that right.

In Exhibit 11, page 127 original record, Mr. Sargent, President of the Northwestern, stated "that in making this decision (referring to this settlement of 1930) that the Northwestern does not concede as a matter of right any portion of the work to the employees of the Omaha Company since the entire business from No. Omaha to Sioux City via California Junction is Northwestern Railroad business. The decision in this case cannot be treated as a precedent covering any future cases, but is rendered because of the desire of both companies to meet the requests of the organization in matters where the organizations have mutually agreed with reference thereto."

Again at the bottom of the same page it is stated, "that for more than 40 years So. Platte and the Eastern Division crews, now Nebraska crews, operating in turn around service between *Mo. Valley* and No. Omaha handling purely Northwestern traffic between these points in either direction." On or about April 1, 1933, one of these Eastern Division crews was eliminated, and train operations changed so that this traffic was moved by the Sioux City Division, or a M. & O. crew operating over the Sioux City Division between Missouri Valley and Omaha.

The actual decision between the M. & O. and Northwestern employees decided is found at the bottom of page 29, original record, and simply finds "that after due consideration the agreement was reached that this service *as between the two roads* as now operated constitutes *inter-railroad service*, and the crew should be apportioned

on the respective lines on the basis that the ratio of miles run on each property in the operation of this service bears to the total miles made by all trains in the operation of this service."

There is *no finding* in this statement that the work to be done by the Northwestern was *not inter-divisional runs,* as the decision of Judge Donohoe and Judge Woodrough *held.*

At page 174, original record, an affidavit of F. M. Nemitz, Vice-President of the O. R. C., states, "that the seniority divisions and the railroad divisions *are not always the same.*"

Exhibit 11, Stipulation 11, page 110, recites, "that the decision of the unions was communicated to the management of both roads to the effect that the runs in controversy should be divided on a basis of *25%* to the employees of the *M. & O.,* and *75%* to the *employees of the Northwestern.*"

There is nothing in the record to show that the 75% assigned to the Northwestern was to be manned solely by the *Sioux City Division* of the Northwestern.

In Exhibit 18, page 147, original record, Mr. Pangle, Assistant to the President of the Northwestern, states, "that the Nebraska Division employees of the Northwestern should be given a run between Omaha and Sioux City in the pool 261 days a year in order to equalize the work which the *Nebraska Division* has *lost* due to the *Sioux City Division* taking over the work between Omaha and Missouri Valley."

At the top of R. page 147, original record, he admits "that as a result of change in method of handling round-up

cars between Missouri Valley and North Omaha, as well as other *service formerly handled by the Nebraska Division crew,* a check has been made to determine what adjustment should be made in assignment of men on account of work between Missouri Valley and No. Omaha *formerly assigned to Nebraska Division employees* being *assigned to the Sioux City Division employees.*"

Clearly showing that the Nebraska Division did this work now assigned to the Sioux City Division simply by the arbitrary action of the railroad, and not as a result of any bargaining agreement.

At page 164, original printed record, it is stated by O. G. Jones, general chairman of B. of R. T., "that the term '*seniority*' used in this and similar cases and applied to railroad operations means *age in service* in a particular craft, and as applied to the craft of brakemen it means the date when the brakemen begins service, and as to the conductors it means the date when he was promoted and began service as a conductor. *Seniority rights,* as they are sometimes called, is limited to a *seniority district,* which is definitely *defined as a portion of a railroad.*"

At page 196, printed record (Ex. 11, Par. 7), it was stipulated and agreed that for many years and at the present time there are operated regularly scheduled freight trains operating between Lincoln, Nebraska, and Missouri Valley, Iowa, which run Lincoln to Fremont, Fremont to Omaha, over the Northwestern tracks. *Omaha to Blair over the M. & O. tracks.* Blair to Missouri Valley over the Northwestern tracks and return over the same route.

That if business conditions required it, extra trains over said route are operated; all of such trains are and

have been, prior to and since May 1, 1930, manned exclusively by *employees of the Nebraska Division of the Northwestern,* while it is further stipulated that said trains are not the *trains* involved in the controversy between Sioux City and Omaha, but are in addition to such trains. This stipulation shows that this *trackage from Omaha to Blair* belonging to the *M. & O.* was part of the *trackage* over which the *Northwestern* traveled in conducting its business.

At the bottom of page 146, original record (Ex. 18), M. E. Pangle, Assistant to the President of the Northwestern, states, "that the Sioux City Division will be ordered to connect with the Iowa Division and handle round up cars to North Omaha, turn at Omaha and handle the time freight north to Sioux City. The Nebraska Division to discontinue the operation of their crew to handle round up cars."

At the top of page 147, original record, it is further admitted in the letter, "that as the result of this change of handling the round up between *Missouri Valley and No. Omaha,* as well as other service *handled by Nebraska division crews,* a check has been made to determine what adjustment should be made in the assignment of men on account of work between Missouri Valley and No. Omaha *formerly assigned to Nebraska division employees being assigned to the Sioux City division employees.*"

It was thereby admitted that the Nebraska Division employees have been deprived of this work as a result of the Sioux City Division employees taking the handling of work between *Missouri Valley and North Omaha,* all of which includes the leased track from *Blair* to *Omaha,* Nebraska, over the *M. & O.*

At page 151, original record, it is shown that when this complaint by the M. & O. people was made that they should have part of this work they stated, "We have been deprived of work by you allowing the Northwestern men to do it, and we want to be paid," and the officers refused and said, "No, that *track* from *Omaha* to *Blair is under lease,* and *they have as much right to use it as we have.*"

At the bottom of page 154, original record, the *M. & O.* claimed that the Northwestern Railroad were, under their contracts with their men, obliged to use their own pilot conductors, as under the contract entered into between the two railroad companies in 1888 the Northwestern had *trackage rights* for the operation of *their trains* between *Blair* and *Omaha,* and *have for 48 years exercised that right. They have just as much right to operate over this piece of track as if they owned half of it* (original record, top page 55).

The committee of the union when they were settling the controversy state (original record, page 155) that the *Northwestern crews* were being used to operate extra trains from *Omaha* to *Blair* and return, and handle tonnage of *both the Northwestern* and the *M. & O.*

Further down on the same page it is stated that the claim of the *M. & O.* employees was allowed for the reason the Northwestern crew in their operation handled *M. & O. Railway business* which belonged to the *M. & O. crews.*

At the bottom of page 157, original record, the union sought to introduce the Constitution and By-Laws of the O. of R. T. and B. of R. T. relating to procedure. This was objected to by petitioners on the ground that the contracts, Exhibits "A" and "B", set up in the petition

and by stipulation constituted the complete contract, and involved all those employees of the Northwestern *whether they belonged to the union or not.*

Jurisdictional Statement

The judgment affirming the District Court's opinion was filed the 19th day of October, 1945. Petition for rehearing was denied on the 7th day of November, 1945.

Jurisdiction of this Court to review this decision is claimed under Sec. 240, Title 28, Par. 347, U. S. Code, as amended, and Rule 38 of Rules of the Circuit Court of the United States, Sec. 5(b).

Questions Presented

The questions presented and reasons relied upon for allowance of writ are:

1. Whether the Court was right in its opinion in holding that the bargaining agents referred to in the opinion settled the questions involved in this controversy.

2. Whether the Court in its opinion erred in not holding that even though the bargaining agents would attempt to settle this controversy, that such bargaining agents, as such, have no right to take away from plaintiffs their seniority rights, which are property rights, without showing that the individual employees affected authorized the bargaining agents to settle this dispute.

3. That for the bargaining agents and the railroads to attempt to deprive the petitioners of their rights without notice would be a violation of the

Fifth Amendment of the United States Constitution under the due process of law provision.

4. Whether or not the Court erred in not passing upon the questions that these petitioners raised, that the state of Nebraska had held in *Rentschler v. Mo. Pac. R. R.*, 126 Neb. 493, 253 N. W. 693, 95 A. L. R. 1, "that these seniority rights were property rights, and once acquired could not be taken away from them by any agreement between the railroad and bargaining agent," and provisions that required the employees to submit to arbitration their private rights without the right to resort to the Court is void as against public policy. That the Supreme Court in the case of *Erie v. Tompkins,* 304 U. S. 644, 58 S. C. R. 817, 114 A. L. R. 487, held the Federal Court was bound by the local decision of the State Court, and in *Moore v. Ill. Central R. R.,* 312 U. S. 630, 61 S. C. R. 754, 84 L. Ed. 1099, it was squarely held, "that a decision involving seniority rights which construed the contract before the matter was submitted to the Federal Court was binding on the Federal Court."

5. Whether or not the decision in this case is in harmony with the recent decisions of the Supreme Court in *Elgin-Joliet R. R. v. Burley,* 89 L. Ed. Adv. Opinion 17, page 1328; *Steele v. L. & N. R. Co.,* 323 U. S. 192; *Tunstall v. B. of L. F. & Enginemen, Ocean Lodge No. 76,* 89 L. Ed. 181, 65 S. C. R. 235; *J. I. Case Co. v. Natl. Rel. Board,* 88 L. Ed. 489, 64 S. C. R. 576, 321 U. S 332, which cases squarely hold that the bargaining agents as such have no right to determine the *property*

rights of the individual, in the absence of proof that the controversy was submitted to them by the individual, and agreement made to abide by such decision. *Nord v. Griffin,* 86 Fed (2d) 481 (7th Cir.).

6. Whether or not the decision relied upon by the Court in its opinion, *Div. 525, Order of R. R. Conductors v. Gorman,* 133 Fed. (2d) 273, is out of harmony with the decision of the Supreme Court of the United States just referred to in the above paragraph, and is clearly distinguishable from the Rentschler case, in that in the Gorman case there was no previous local decision, as there was here in the Rentschler case, construing the collective bargaining agreement, and it is in conflict with the Elgin, Steele and Tunstall cases. (Bottom page 17, C. C. A. Record.)

Reasons Relied Upon as Set out in Rule 38, Par. 5(b)

1. This decision has decided an important question of local law, which is in conflict with the applicable local decisions in the Rentschler case above referred to.

2. That it has decided a Federal question in conflict with the applicable decisions of this Court cited above.

3. This opinion has departed from the accepted and judicial proceedings, in that it has held in violation of the above due process clause of the Fifth Amendment of the United States, and has so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision in violation of the due process clause of the Fifth Amendment of the United States.

WHEREFORE, your petitioners pray that a Writ of Certiorari issue under the seal of this Court directed to the Circuit Court of Appeals, 8th Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record, and the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its docket as No. 13,055, Barney E. Gaskill, et al., Appellants, vs. Claude A. Roth, Trustee of the Property of the Chicago and North Western Railway Company, et al., Appellees, to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment herein of said Circuit Court of Appeals be reversed by this Court and have such and other further relief as to the Court may seem proper.

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